

**U.S. Department of Justice**

Civil Rights Division

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*Office of the Assistant Attorney General*

*Washington, DC 20530*

July 23, 2002

Dwight W. Snow, Esquire  
Post Office Box 397  
Dunn, North Carolina 28335

Duncan B. McCormick, Esquire  
Post Office Box 1629  
Lillington, North Carolina 27546

Dear Messrs. Snow and McCormick:

This refers to the 2001 redistricting plans for the board of commissioners and board of education in Harnett County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your initial response to our May 14, 2002, follow-up request for additional information on May 24, 2002; supplemental information was received through July 16, 2002.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the county's 2001 redistricting plan.

According to the 2000 Census, black persons represent 22.6 percent of the county's total population and 20.7 percent of its voting age population. The county's current method of electing the five members of both the board of commissioners and board of education from five single-member districts resulted from a 1989 consent decree entered in Porter v. Stewart, No. 89-950 (E.D.N.C.), which alleged that the county's then-existing at-large methods of election violated Section 2 of the Voting Rights Act. Under the plans used by the county since 1989, black persons constituted a majority of both the total and the voting age population in one of the five districts, District 1. According to your submission, under 2000 Census data, District 1 in the 1992 plan is 52.7 percent black in total population and 50.8 percent black in voting age population and is underpopulated by 20.4 percent. This plan serves as the benchmark for our

analysis.

In contrast to the benchmark plan, the proposed 2001 redistricting plan contains no district in which black persons are a majority, in either total or voting age population. According to the information you provided, the black population percentage of the total population in proposed District 1 drops six percentage points to 46.6 percent, and the voting age population by seven points to 43.9 percent. For the reasons set forth below, we believe that, within the context of electoral behavior in the county and the availability of alternative redistricting plans, the county has not established that this reduction will not result in a retrogression in the ability of minority voters to exercise their electoral franchise.

The election returns provided by the county suggest that since 1990 the candidates elected in District 1 to both boards have received strong cohesive support from black voters as well as support from white voters. The county has held elections in 1990, 1994, and 1998 in District 1; each of these elections resulted in black candidates being elected to both boards from District 1. Our review also shows that some interracial elections were closely contested. For example, in 1990 and 1994, two of the three years in which the District 1 seat for the board of commissioners was up for election, a black candidate won the Democratic primary election with 54 to 55 percent of the vote, at a time when District 1 was roughly 54 percent black in voting age population. As a result, the proposed seven point reduction in the black voting age percentage in District 1 casts significant doubt as to whether, in similar, closely-contested elections over the next decade, black voters would retain the same electoral ability that they do in the benchmark plan, particularly if the current incumbents in District 1 decline to run again for office.

Moreover, during the redistricting process neither board considered any redistricting plan in which black persons would remain a majority of either the total or voting age populations in District 1. We understand that counsel for the Porter plaintiffs, however, subsequently provided county officials with two alternative plans. In the second of these plans, blacks persons remain a majority of both the total and voting age populations, while also complying with one-person, one-vote requirements and other constitutional restrictions. That plan also maintains all present incumbents in their districts, is not dramatically different from the existing plan, and appears to be less unusual in overall design than the proposed plan.

In short, the retrogression in proposed District 1 was not unavoidable. Our review of the county's benchmark and proposed plans, as well as the alternative plans provided by the Porter plaintiffs, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan, and the likely resulting retrogressive effect on the ability of black voters to elect candidates of choice, was neither inevitable nor was it required by any constitutional or legal imperative. In saying this we recognize that, in revising the benchmark plan to bring it into compliance with the one-person, one-vote requirement, the county took steps to mitigate the reduction in black percentage in District 1, such as including the Campbell University area in the district, and leaving the district relatively underpopulated as redrawn.

We believe that alternative redistricting approaches available to the county would not result in any

retrogression in black voting strength, or occasion a significant conflict with the county's redistricting goals as they have been presented to us in your submission, or as they are reflected in the county's existing redistricting plan. Further, should the county believe that such an altered plan conflicts with the county's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Harnett County plans to take concerning this matter. If you have any questions, you should call Chris Herren (202-514-1416), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins  
Acting Assistant Attorney General